

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 84-005-04-2-8-00011
Petitioner: Brotherhood of Locomotive Engineers
Respondent: Vigo County Assessor
Parcel: 84-00-00-025-975.000-005
Assessment Year: 2004¹

The Indiana Board of Tax Review (Board) issues this determination in the above matter. The Board finds and concludes as follows:

Procedural History

1. The Petitioner initiated an assessment appeal with the Vigo County Property Tax Assessment Board of Appeals (PTABOA) by filing a Form 130. The PTABOA mailed its determination to the Petitioner on October 30, 2007.
2. The Petitioner appealed to the Board by filing a Form 131 on November 13, 2007. The Petitioner elected to have this case heard according to small claims procedures.
3. The Board issued a notice of hearing to the parties dated January 8, 2008.
4. Administrative Law Judge Paul Stultz held the hearing on February 11, 2008.
5. Mr. Michael Priester, General Chairman, and Ms. Deborah Priester² were sworn as witnesses for the Petitioner. Ms. Deborah Lewis, Vigo County Assessor, also was sworn as a witness.

Facts

6. The subject property is business tangible personal property located at 1400 East Pugh Drive in Terre Haute.
7. The Administrative Law Judge did not conduct an inspection of the property.
8. The PTABOA denied the request for exemption for the assessment year 2004 because the Petitioner failed to file a timely exemption claim.

¹ Although the Form 131 does not indicate the assessment year under appeal (the space was left blank), the parties agreed that the year under review should be 2004.

² Ms. Priester did not testify.

9. The Petitioner requests exemption for the assessment year 2004 even though it did not file a timely claim for exemption.

Contentions

10. Summary of the Petitioner's contentions:
- a) The property is used to operate the local office of the Brotherhood of Locomotive Engineers (BLE). It consists of desks, chairs, file cabinets, and other office furnishings. *Priester testimony.*
 - b) The BLE is a not-for-profit union exempt from federal income taxes. It is a Division of the Rail Conference, International Brotherhood of Teamsters. The subject property is used exclusively by the BLE in the performance of its representation duties to its membership. The BLE has more than 500 members from the Canadian Pacific Railway, the Northeast Illinois Regional Commuter Railroad, and the Indiana Southern Rail Road. *Priester testimony; Pet'r Ex. 7.*
 - c) The BLE failed to timely file an application for exemption in 2004. Its secretary-treasurer was not aware that an application for exemption should be filed to obtain the exemption. *Priester testimony; Pet'r Ex. 7.*
11. Summary of Respondent's contentions:
- a) The issue is not whether the property qualifies for exemption. The issue is whether the Petitioner can obtain an exemption retroactively. *Lewis testimony.*
 - b) The BLE did not file an application for exemption in 2004. Instead, the BLE filed a Form 130 in 2006 asking the PTABOA to approve an exemption retroactively. The Form 130 was denied because the PTABOA does not have the authority to grant relief retroactively. *Lewis testimony; Resp't Ex. 1.*

Record

12. The record for this matter is made up of the following:
- a) The Petition,
 - b) The digital recording of the hearing,
 - c) Petitioner Exhibit 1 – Forms 103 and 104 for 2004,
Petitioner Exhibit 2 – The 2005 tax bill,
Petitioner Exhibit 3 – Forms 103 and 104 for 2005 and the 2005 Form 136,
Petitioner Exhibit 4 – The 2006 tax bill,
Petitioner Exhibit 5 – The 2007 tax bill,
Petitioner Exhibit 6 – Form 130,
Petitioner Exhibit 7 – Letter to Vigo County Assessor dated October 2, 2007,

Petitioner Exhibit 8 – Form 138,
Petitioner Exhibit 9 – Form 115,
Petitioner Exhibit 10 – Form 131,
Petitioner Exhibit 11 – Notice of Hearing on Petition,
Respondent Exhibit 1 – House bill 1767, pages 9 and 10,
Respondent Exhibit 2 – Auditor’s assessment and exemption record for BLE,
Board Exhibit A – Form 131 with attachments,
Board Exhibit B – The Notice of Hearing,
Board Exhibit C – Hearing Sign In Sheet.

Analysis

13. An exemption is a privilege that may be waived by a person who would otherwise qualify for it. Ind. Code § 6-1.1-11-1. If the Petitioner does not comply with the statutory procedures for obtaining an exemption, the exemption is waived. *Gulf Stream Coach v. State Bd. of Tax Comm’rs*, 519 N.E.2d 238, 242 (Ind. Tax Ct. 1988).
14. In order to obtain an exemption, a property owner must file a written application on or before May 15 of the year for which it seeks the exemption. Ind. Code § 6-1.1-11-3(a). The requirement to file by May 15 of the year in which the property is assessed allows the tax to be calculated (accounting for any exemption) and notice to be sent out prior to the first installment payment due date. *Indiana C.A.P. Directors Ass’n v. Dep’t of Local Gov’t Fin.*, 797 N.E.2d 878, 880 (Ind. Tax Ct. 2003).
15. The Petitioner’s application was required to be filed by May 15, 2004, to obtain exemption for the 2004 assessment year.³ The Petitioner readily admitted that it did not do so. The plain language of Ind. Code § 6-1.1-11-3(a) makes no exceptions for failing to follow the statutory procedures for obtaining exemption.

³ This statement should not be taken as an indication that the subject property otherwise qualifies for exemption.

Conclusion

16. The Petitioner's failure to file an exemption application by May 15, 2004, is determinative in this matter. The exemption claim is denied.

Final Determination

17. There will be no change and the property will remain 100% taxable.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>